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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

KEVIN WALKER on behalf of K.W., his
minor son,

Plaintiff,

vs.

PLAYCORE, INC., PLAYCORE HOLDINGS,
INC., and FREENOTES HARMONY PARK
LLC,

Defendants.

Case No.

**COMPLAINT FOR HARMS AND
LOSSES**

Plaintiff KEVIN WALKER on behalf of K.W., his minor son, through counsel, the
Choate Law Firm LLC for causes of action against Defendants PLAYCORE, INC.,

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PLAYCORE HOLDINGS, INC., and FREENOTES HARMONY PARK LLC, alleges as follows:

I. PARTIES

1. At all times mentioned herein, Plaintiff KEVIN WALKER was, and is a resident of the City of Juneau in the State of Alaska and brings this action on behalf of K.W., his minor son.

2. Defendant PLAYCORE, INC. is, and at all material times was, a corporation existing under the laws of Delaware with its principal place of business in Chattanooga, Tennessee.

3. Defendant PLAYCORE HOLDINGS, INC. is, and at all material times was, a corporation existing under the laws of Delaware with its principal place of business in Chattanooga, Tennessee.

4. Defendant FREENOTES HARMONY PARK LLC, is, and at all material times was, a corporation existing under the laws of Colorado, with its principal place of business in Chattanooga, Tennessee. On information and belief, Defendant FREENOTES HARMONY PARK LLC is a continuation and/or real successor in interest to FREENOTES HARMONY PARK, INC. a corporation that existed under the laws of Colorado that was dissolved on February 27, 2019.

5. All Defendants generally engaged in the business of operating a business manufacturing playground equipment distributed for sale throughout the United States, including the State of Alaska.

II. VENUE AND JURISDICTION

6. The statements in this complaint arise from injuries that occurred on May 25, 2019, resulting from a defective “Imbarimba” -- a musical instrument resembling a large xylophone -- manufactured and placed into commerce by Defendants that was installed at the playground in Twin Lakes Park in Juneau, Alaska.

7. This action is brought under the Court’s diversity jurisdiction, 28 U.S.C. § 1332. Damages exceed \$100,000.00 and Plaintiff is diverse from all Defendants.

8. Venue for this proceeding is proper in the U.S. District Court for the District of Alaska as it is the venue in which a substantial part of the events giving rise to the complaint occurred.

III. FIRST CAUSE OF ACTION: NEGLIGENCE AS TO ALL DEFENDANTS

9. Plaintiff re-alleges and incorporates by reference every allegation in the preceding paragraphs as if fully set forth in this section.

10. Defendants PLAYCORE, INC., PLAYCORE HOLDINGS, INC. and FREENOTES HARMONY PARK, LLC (collectively “Defendants”) are corporations

authorized to do and doing business in the City and Borough of Juneau in the State of Alaska.

11. Defendants are engaged in the manufacture, design, testing, producing, inspecting, vending, introducing into interstate commerce for sale therein, transporting in interstate commerce for sale therein, advertising, selling and recommending for use to the public, business, and government, playground equipment for use in outdoor playgrounds.

12. Defendants are engaged in the delivery, installation, inspection, selling, advertising, and recommending for use to the general public a certain product, specifically the “IMBARIMBA”, a large musical instrument resembling a xylophone, intended to be permanently installed in outdoor playgrounds.

13. The City and Borough of Juneau purchased an IMBARIMBA from Defendants which was installed in accordance with its instructions in the playground at Twin Lakes Park in Juneau, Alaska.

14. On May 25, 2019, K.W., a minor, was playing in the playground at Twin Lakes Park in Juneau, Alaska, when one or more screws securing the heavy, metal top of the IMBARIMBA that contained its “keys” failed and broke, causing the IMBARIMBA to fall onto K.W., causing a deep, approximately five-inch laceration to his leg.

15. K.W. was rushed to Bartlett Regional Hospital where he underwent surgery to reattach a tendon severed by the IMBARIMBA and apply stitches to the inside and outside of the leg.

16. At all times herein mentioned, Defendants knew, or in the exercise of ordinary and reasonable care should have known, that if the IMBARIMBA was not properly manufactured, designed, assembled, tested, inspected, packaged, labeled, analyzed, distributed, monitored, merchandised, recommended, advertised, promoted, and marketed for the intended reasonable and foreseeable use by its end users, it was likely to cause injury to the user.

17. Defendants negligently and carelessly manufactured, designed, assembled, tested, or failed to test, inspected or failed to inspect, packaged, labeled, analyzed, distributed, monitored, merchandised, recommended, advertised, promoted, and marketing the IMBARIMBA such that it was in dangerous and defective condition and unsafe for the reasonable and foreseeable use for which it was sold by Defendants.

18. The defective and dangerous character and condition of the IMBARIMBA was unsafe for the reasonable and foreseeable use for which it was intended, was known to Defendants, or in the exercise of ordinary and reasonable care should have been known and discovered by Defendants.

19. The dangerous and defective character and condition of the IMBARIMBA was not made known to Plaintiff K.W. or members of the public by Defendants or Defendants' agents.

20. At the time of K.W.'s injury, K.W. was using the product in a reasonable and foreseeable manner for the purpose for which it was intended.

21. K.W.'s injuries, including but not limited to a severed tendon, deep laceration, and scarring, were caused by Defendants' negligent design, manufacture, testing, inspection, instructions, or warnings regarding the product.

22. K.W. has further suffered ongoing pain, restrictions in his movement and activities, and other diminutions in the quality of his life.

23. K.W.'s damages include past medical expenses, future medical expenses, emotional distress, and mental suffering.

24. K.W.'s special and general damages exceed \$75,000. Plaintiff asks for leave of court either to show the amount of his damages when ascertained, or to prove said amount at time of trial.

**IV. SECOND CAUSE OF ACTION: BREACH OF EXPRESS WARRANTY
AS TO ALL DEFENDANTS**

25. Plaintiff re-alleges and incorporates by reference every allegation in the preceding paragraphs as if fully set forth in this section.

26. Defendants warranted and represented that said IMBARIMBA was of merchantable quality.

27. Said product was not of merchantable quality in that when used in a normal manner it caused injury as previously set forth.

**V. THIRD CAUSE OF ACTION: STRICT PRODUCTS LIABILITY
AS TO ALL DEFENDANTS**

28. Plaintiff re-alleges and incorporates by reference every allegation in the preceding paragraphs as if fully set forth in this section.

29. Defendants introduced into the stream of commerce in the United States the IMBARIMBA while in a dangerous and defective condition.

30. As a direct and legal result of the dangerous and defective condition of the IMBARIMBA, K.W. suffered personal injuries as set forth above.

31. Defendants are strictly liable to Plaintiff because of the dangerous and defective nature of said product.

Wherefore, KEVIN WALKER seeks judgment as prayed for below.

PRAYER FOR RELIEF

PLAINTIFF prays for judgment against Defendants PLAYCORE, INC. PLAYCORE HOLDINGS, INC. AND FREENOTES HARMONY PARK LLC as follows:

- a. For past and future special damages, according to proof;
- b. For general damages, according to proof;
- c. For past and future economic losses, according to proof;
- d. For punitive damages;
- e. For prejudgment and post-judgment interest at the maximum rate allowed by law;
- f. For attorney's fees and costs as allowed by law;
- g. For such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff requests jury trial on all issues so triable in this matter.

Dated: Monday, May 24, 2021 at Juneau, Alaska.

CHOATE LAW FIRM LLC
Attorneys for Plaintiff

By: _____ s/ Mark Choate

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